

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 828 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

IKBAL HASAM SUMRA (KHAFI)

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MS.SIDDHI TALATI, AGP.for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the prayers are for quashing the show cause notice dated 21.12.1998 issued under section 59 of the Bombay Police Act and for quashing the externment order passed by the Externing Authority dated 13.5.1998 and also that of Appellate Authority passed on

12.8.1998.

In view of five cases registered under various sections of the Indian Penal Code, Bombay Police Act and Arms Act and repetition of such offences, a show cause notice under section 59 of the Bombay Police Act was issued to the petitioner to show cause why he may not be externed for a period of two years from the districts Jamnagar, Rajkot, Junagadh and Kachchh. In response to the show cause notice the petitioner appeared and submitted his written statement. He was afforded adequate opportunity of hearing. On 8.5.1998 the Externing Authority found that the petitioner did not produce any evidence nor examined any witness in his defence nor he was prepared to examine any witness. After looking to the material on record the Externing Authority passed the impugned order of externment on 13.5.1998. An appeal was preferred which was dismissed by the Appellate Authority. It is, therefore, this writ petition.

The learned Counsel for the petitioner has challenged the show cause notice as well as the order of the Externing Authority and the Appellate Authority on several grounds.

The first contention was that the order of the Externing Authority as well as the show cause notice so also the order of the Appellate Authority suffer from the vice of non application of mind. It was contended that there is routine recital in the show cause notice and the two impugned orders that the petitioner had committed offences punishable under Chapters XVI and XVII of the Indian Penal Code. Whereas the list of seven cases mentioned in the show cause notice does not show that any offence is punishable under Chapter XVII of the IPC. After examining the list of cases given in the show cause notice it appears that offences punishable under Chapter V of Arms Act, were committed by the petitioner whose reference is to be found as CR Nos.70/95, 69/98 and 70/98. There is thus no error on this count. The other offences under the Indian Penal Code are mainly punishable under Chapter XVI of the Indian Penal Code. No offence punishable under Chapter XVII of the Indian Penal Code is found to have been committed in the list of cases. The offences punishable under sections 504 and 506 of Indian Penal Code are punishable under Chapter XXII of the Indian Penal Code. However, this does not reflect non application of mind, rather, it reflects carelessness in drafting the show cause notice wherein carelessly Chapter XVII of the Indian Penal Code was

mentioned and this error was carried forward in the externing order as well as in the order of Appellate Authority. Such clerical errors, omissions or careless recitals are not something unusual in as much as in the translated copy of the order of the Appellate Authority at three places at page nos. 3-4 word 'plaintiff' was typed and it was certified to be correct copy of the judgment of the Appellate Authority. If such error in translation could have taken place such error could likewise be committed by the Externing Authority or the person who typed the show cause notice. It is, therefore, difficult to accept that the impugned order/notice suffers from non application of mind.

I also do not find force in the contention that there was no occasion or necessity for externing the petitioner from four districts from Jamnagar, Rajkot, Junagadh and Kachchh. In the show cause notice reason has been indicated why the petitioner was proposed to be externed from these districts and the reasoning is that even from these adjoining districts the petitioner could continue in his alleged illegal activities. In the order of externment also the same reasonings were given by the Externing Authority. The Externing Authority was well within his right and jurisdiction to pass the order for externment from contiguous districts if he was of the opinion that the petitioner could have operated and committed similar offences from adjoining districts. Thus, on this ground the impugned order of externment cannot be quashed.

It however appears from the order of the Externing Authority as well as of the Appellate Authority that entire material was neither disclosed in the show cause notice nor it was disclosed and considered properly in the impugned orders. The Appellate Authority has concluded by mentioning that he had gone through FIR on the original file and had also gone through the statements of four confidential witnesses. The statements of four confidential witnesses or the gist of four statements were not disclosed in the show cause notice and in this way the petitioner was prevented from submitting effective reply to the show cause notice. The Externing Authority in its order has not at all mentioned that he had considered the statements of four confidential witnesses. These statements were already on record. If the Externing Authority did not consider these statements it shows that he did not consider the entire material before passing the impugned order of externment. The Appellate Authority no doubt considered the statements of four confidential witnesses but there

is ceremonial recital in the appellate order that the statements of four confidential witnesses were considered. No reason has been given why those statements were accepted. The order of the Appellate Authority was in the nature of quasi judicial order and it should have exhibited objectivity. Subjectivity was required to be shown only in the show cause notice and not in the orders of the quasi judicial authority. The learned Assistant Government Pleader has argued from the record that it is correct that four confidential witnesses were examined and their statements were placed on record. Consequently it is established that in the first place the statements of these witnesses or extracts from the statements of these witnesses were not disclosed in the show cause notice which prevented the petitioner from giving effective reply to the show cause notice. These statements were not considered by the Externment Authority and not properly appreciated by the Appellate Authority. As such the impugned order of externment cannot be maintained. The result therefore, is that the writ petition succeeds.

The prayer in the writ petition for quashing the show cause notice cannot be accepted because the show cause notice has exhausted after the order of the Externment Authority and the Appellate Authority. No fresh proceedings on this show cause notice can be initiated. As such there is no necessity to quash the show cause notice. However, the orders of the Externment Authority as well as the Appellate Authority have to be quashed. The writ petition therefore partly succeeds and is partly allowed. The orders of Externment Authority as well as of the Appellate Authority dated 13.5.1998 and 12.8.1998 are hereby quashed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt